

BellSouth Telecommunications, Inc. Legal Department 1600 Williams Street Suite 5200

Columbia, SC 29201

patrick.turner@bellsouth.com

Patrick W. Turner

General Counsel-South Carolina

803 401 2900 Fax 803 254 1731

May 6, 2004

The Honorable Bruce Duke **Executive Director** Public Service Commission of SC Post Office Drawer 11649 Columbia, South Carolina 29211

Re:

Petition for Arbitration of US LEC of South Carolina Inc. Of an Amendment to an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended Docket 2004-78-C

Dear Mr. Duke:

Enclosed for filing are the original and twenty-five copies of BellSouth Telecommunications, Inc.'s Direct Testimony of Kristen E. Rowe and BellSouth Telecommunications, Inc.'s Direct Testimony of Kathy K. Blake in the above-referenced matter.

By copy of this letter, I am serving this testimony on all parties of record as reflected by the attached Certificate of Service.

Sincerely,

Patrick W. Turner by mm

PWT/nml Enclosures

cc: Parties of Record

PC Docs # 536965

1		BELLSOUTH TELECOMMUNICATIONS, INC.
2		DIRECT TESTIMONY OF KRISTEN E. ROWE
3	J	BEFORE THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA
4		DOCKET NO. 2004-78-C
5		MAY 6, 2004
6		
7	Q.	PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH
8		TELECOMMUNICATIONS, INC. ("BELLSOUTH") AND YOUR
9		BUSINESS ADDRESS.
10		
11	A.	My name is Kristen E. Rowe. I am employed by BellSouth as
12		Director, CLEC Negotiations in Interconnection Services Marketing. My
13		business address is 675 West Peachtree Street, Atlanta, Georgia 30375.
14		
15	Q.	PLEASE PROVIDE A BRIEF DESCRIPTION OF YOUR BACKGROUND
16		AND EXPERIENCE.
17		
8	A.	I graduated from Indiana University in 1992 with a Bachelor of Arts degree in
9		Economics and French. In 2003, I received a Master of Business
20		Administration from Kennesaw State University. My Regional Bell Operating
21		Company career began at Ameritech in 1994 where I sold directory advertising
22		and performed market management functions until relocating to Atlanta and
23		beginning employment with BellSouth in 1998. From 1998 until 2003, I held
24		positions in Interconnection Services Market Management and Sales
25		Operations. In 2004, I moved into my current position with various

1		responsibilities for managing the Competing Local Exchange Carrier
2		("CLEC") Negotiations personnel and process.
3		
4	Q.	WHAT IS THE PURPOSE OF YOUR TESTIMONY?
5		
6	A.	The purpose of my testimony is to explain BellSouth's position on two (2) of
7		the unresolved policy issues in this proceeding, issues A-5 and A-21.
8		
9	Item	1; Issue A-5: (a) How should the vacatur of the FCC Rules and Orders be
10		implemented under this agreement?
11		(b) What rates, terms, and conditions should apply for the transition of
12		unbundled network elements or combinations thereof that are no longer
13		offered pursuant to, or are no longer in compliance with, the New
14		Agreement?
15		
16	Q.	WHAT DOES BELLSOUTH SEEK TO ACCOMPLISH BY INCLUDING
17		VACATUR LANGUAGE IN THE INTERCONNECTION AGREEMENT?
18		
19	A.	BellSouth seeks clarity between the parties regarding their respective
20		obligations pursuant to this Interconnection Agreement as well as the business
21		processes to be used should vacatur of certain rules promulgated under the
22		Federal Communications Commission's ("FCC's") Triennial Review Order
23		("TRO") take place. The language BellSouth proposes is very specific. It
24		applies only to the specific requirements for unbundled network elements
25		("UNEs") vacated by the DC Circuit Court of Appeals Order ("Order") issued

on March 2, 2004. BellSouth's language does not seek to address requirements for UNEs required by the TRO that were remanded to the FCC, in its TRO, nor does it affect UNEs required by the FCC's TRO but not addressed by the Order.

Upon the effective date of the vacatur by the DC Circuit Court of Appeal's of the TRO, BellSouth will no longer be obligated to provide certain services pursuant to Sections 251 and 252 of the 1996 Telecommunications Act ("Act"), and BellSouth proposes a transition plan to provide these services subject to Sections 201 and 202 of the Act at just and reasonable rates.

12 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

A. Regarding Subpart (a) of this issue, BellSouth's proposed language provides a
means for transitioning those services vacated in the Order (that BellSouth is
no longer required to provide under Section 251 of the Act) to other
arrangements. As set forth in my discussion of Subsection (b) of this issue,
these arrangements would subsequently be governed by either a 1) separately
negotiated commercial agreement, or 2) a tariff or 3) the Resale Attachment of
the Interconnection Agreement.

Q. DO THE PARTIES AGREE THAT VACATUR LANGUAGE SHOULD BE INCLUDED IN THE INTERCONNECTION AGREEMENT?

25 A. Yes. In fact, both parties have proposed vacatur language for consideration.

Q. ONCE VACATUR OCCURS, WHEN AND HOW WILL BELLSOUTH
 IMPLEMENT THE VACATUR?

Α.

Upon an effective order, BellSouth will notify US LEC that US LEC should no longer order UNEs vacated by the Court's Order, and US LEC will refrain from ordering such UNEs. Over the next 30 days, US LEC would identify and place orders to transition its embedded base of circuits from those services BellSouth is no longer required to provide to one of the three alternate arrangements referenced above. Billing of such arrangement upon completion of the order will be governed by the rates, terms and conditions of the arrangement to which the UNE is transitioning.

If after that thirty (30) day period has elapsed, US LEC has not submitted orders to transition all its services, BellSouth will identify those services and notify US LEC of the specific UNEs that remain to convert, and US LEC will then have an additional 30 days to submit orders to disconnect or transition those UNEs to an alternate arrangement. In the event BellSouth is left to identify and notify US LEC of vacated UNEs for which US LEC has not placed orders, US LEC will reimburse BellSouth for any expense associated with the identification and notification of those UNEs and the rates of the arrangement to which the service transitions shall be applied retroactively to the effective date of the vacatur. Imposing these expenses should discourage US LEC (or any CLEC) from trying to avoid the application of the vacatur.

1	Q.	WHAT DOES BELLSOUTH SEEK TO DO IF A CLEC DOES NOT
2		COMPLY WITH THE AGREED UPON PROCESS?
3		
4	A.	BellSouth desires to maximize utilization of its network by providing service
5		to CLECs, even where BellSouth has no such obligation under Sections 251
6		and 252, at just and reasonable pricing. BellSouth where possible, would
7		convert vacated UNEs to one of the three arrangements referenced above.
8		
9	Q.	DO THE PARTIES DISAGREE ON THIS TRANSITION SCHEDULE?
10		
11	A.	Only as to some of the details. In her testimony, Ms. Montano states "US LEC
12		does not believe a 30 day period is either practical or realistic." BellSouth
13		proposes that US LEC have 30 days to submit orders. BellSouth agrees to an
14		additional 30 days for US LEC to submit orders for those vacated UNEs that,
15		for whatever reason, may have been inadvertently overlooked. Given the fact
16		that the Order was issued on March 2, 2004, and the parties have already had
17		more than two (2) months to plan for vacatur, and will have another month and
18		half before June 15, 2004, this is both a practical and reasonable transition
19		period.
20		
21	Q.	ON WHAT OTHER DETAILS DO THE PARTIES DISAGREE?
22		
23	A.	In reviewing US LEC's testimony, it appears there may be a disagreement as to
24		which elements will ultimately remain vacated as a result of the DC Circuit

Court's Order. However, such a determination is clearly premature and such

1		speculation is not really germane to the details of the transition plan. To the
2		extent, Ms. Montano states 271 UNEs should be included in Attachment 2 or
3		the parties' Interconnection Agreement, I defer that issue to Ms. Blake who has
4		addressed that issue in her testimony. As to the ultimate outcome of the DC
5		Circuit Court's Order, the parties will just have to wait and see.
6		
7	Item	2; Issue A-21: Can US LEC adopt an agreement that has not been amended to
8		incorporate the TRO when the Change in Law provision of US LEC's
9		current agreement has been triggered?
10		
11	Q.	PLEASE EXPLAIN THE DISAGREEMENT BETWEEN THE PARTIES.
12		
13	A.	US LEC wants to adopt an existing agreement that was approved before the
14		TRO was effective, and therefore, contains certain provisions that were
15		expressly vacated by the TRO. BellSouth simply wants the Interconnection
16		Agreement between the parties to be compliant with current law, specifically,
17		the TRO.
18		
19	Q.	WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?
20		
21	A.	BellSouth's position on this issue is that US LEC may adopt an agreement
22		subject only to the requirement that the UNE Attachment of the Agreement is
23		conformed to the TRO. With respect to the TRO, the provisions of the
24		agreement that must be conformed to include, but are not limited to, provisions
25		relating to broadband loops, entrance facilities, switching and call related

l databases a	ind Enhanced	Extended	Links (("EELs")
---------------	--------------	----------	---------	---------	---

3 Q. WHAT IS THE BASIS FOR BELLSOUTH'S POSITION?

A.

Rule 47 C.F.R 51.809(c) provides that BellSouth is only obligated to make interconnection agreements available for adoption pursuant to Section 252(i) of the Act "for a reasonable period of time after the approved agreement is available for public inspection" 47 C.F.R.§ 51.809(c). The reasonable period of time to adopt the UNE Attachment of an Agreement without modification expired no later than October 2, 2003, the effective date of the TRO, and perhaps as early as August 20, 2003, the date the TRO was released. At the latest, after October 2, 2003, portions of the UNE Attachment to Agreements were no longer compliant with the law, and thus the reasonable adoption period for those contracts, without amendment to conform to the law, expired. In an effort to work with carriers, BellSouth allowed carriers to opt into non-compliant Agreements until BellSouth provided to CLECs a TRO-compliant Standard Agreement (November 2003). The time for US LEC to opt into such non-compliant agreements, however, has long since expired.

20 Q. HAS THE FCC ADDRESSED THIS TYPE OF ISSUE?

22 A. Yes. The FCC's Order on Remand and Report and Order in the Internet
23 Service Provider ("ISP") docket confirms that the "reasonable period of time"
24 during which agreements may be adopted expires upon the publication of an

FCC order altering the regulatory regime.¹ In the ISP case, the FCC established a new interim compensation regime for ISP traffic. The Commission recognized the danger of perpetuating the old regime via carriers opting into agreements that predated the Commission's decision. To prevent this inequitable result, the Commission held that "[w]e conclude that any 'reasonable period of time' for making available rates applicable to the exchange of ISP-bound traffic expires upon the Commission's adoption in this Order of an intercarrier compensation mechanism for ISP-bound traffic." *Id.* at fn. 155.

Q. DOES THIS RATIONALE APPLY HERE?

Α. Yes. The same rationale controls the requested opt-in to a non-TRO compliant Attachment 2. The reasonable time to opt-in to pre TRO Agreements with provisions that are inconsistent with the effective portions of the TRO expired, at the latest, with the effective date of the TRO. To allow carriers to continue to opt-in to such portions of pre-TRO Agreements that contain provisions that are non-compliant with current law would be contrary to public policy in that it would perpetuate a non-compliant regime and prevent the industry from moving forward under the new rules.

22 Q. WHAT COULD US LEC HAVE DONE TO ADOPT AN EXISTING

¹ Order On Remand and Report and Order, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic, CC Docket Nos. 96-98, 99-68, 16 FCC Rcd 9151 (April 18, 2001) ("ISP Order").

1	ACREMENT	DDIOD TO	THE FIL	INIC OF THIS	ARBITRATION?
1	AUKEEMENT	PRIOR IC	, , , , , , , , , , , , , , , , , , , ,	HMOLOC LOIS	AKDIIKAIION

A. US LEC could have taken BellSouth's standard TRO-compliant agreement or adopted an existing agreement that had been amended to include the TRO. In the alternative, US LEC could have taken BellSouth's TRO-compliant Attachment 2 in conjunction with an adoption of the rest of another carrier's existing agreement and, after execution thereof, the parties could have negotiated that Attachment 2 for the contractually allotted time. In such case, BellSouth would have agreed that any disputed issues be taken to the state commission.

12 Q. WHY SHOULD THE COMMISSION NOT ALLOW THE ADOPTION OF
13 AGREEMENTS THAT ARE NOT COMPLIANT WITH THE TRO?

A. BellSouth does not support perpetuating Interconnection Agreements and business practices that are not compliant with current law. To continue to perpetuate said Interconnection Agreements business practices for resistant carriers who are "gaming" the process creates disparity between those CLECs that negotiate in good faith and seek to maintain compliance in their Interconnection Agreements and those CLECs that do not.

Q. DID MR. HOFFMAN ACCURATELY SET FORTH THE TIMELINE OF
EVENTS LEADING UP TO THE FILING OF THE ARBITRATION
PETITION?

A. Not entirely. Specific to US LEC and the Triennial Review Order, which was effective October 2, 2003, the Parties mutually agreed in a face-to-face meeting held on November 19, 2003, (and which meeting was prompted by US LEC's notice of its request to negotiate on October 8, 2003, and BellSouth's receipt of US LEC's proposal on October 23, 2003), that BellSouth would provide TRO compliant language and that US LEC would red-line such language and return same to BellSouth. On December 12, 2003, as mutually agreed by the Parties in the November 19, 2003, meeting, BellSouth sent to US LEC BellSouth's proposed TRO-compliant Attachment. In addition to the parties agreeing that US LEC would red-line BellSouth's TRO Attachment, BellSouth agreed to extend the negotiation period sixty (60) days beyond the expiration of the agreement. US LEC did not provide its redline updates until March 1, 2004, three days before it filed its Petition for arbitration.

Q. HOW DOES BELLSOUTH'S TRO-COMPLIANT ATTACHMENT IMPACT THE AVAILABILITY OF SWITCHING AS A UNE IN SOUTH CAROLINA?

20 A. Under BellSouth's proposed TRO attachment, BellSouth will continue to 21 provide switching as a UNE in South Carolina. The only exception to this, as 22 provided in the TRO, is in the case where an end user is served at a location by 23 a DS-1 or higher capacity loop, also described as enterprise switching in the 24 TRO.

- 1 Q. DOES THIS CONCLUDE YOUR TESTIMONY?
- 2
- 3 A. Yes.

STATE OF SOUTH CAROLINA)	
office of booth chicolini	,	and a second of
)	CERTIFICATE OF SERVICE
COUNTY OF RICHLAND)	

The undersigned, Nyla M. Laney, hereby certifies that she is employed by the Legal Department for BellSouth Telecommunications, Inc. ("BellSouth") and that she has caused BellSouth Telecommunications, Inc.'s Direct Testimony of Kristen E. Rowe in Docket No. 2004-78-C to be served on the following this May 6, 2004:

F. David Butler, Esquire General Counsel S. C. Public Service Commission Post Office Box 11649 Columbia, South Carolina 29211 (PSC Staff) (Electronic Mail and US Mail)

Florence P. Belser, Esquire S. C. Public Service Commission Post Office Box 11649 Columbia, South Carolina 29211 (PSC Staff) (U. S. Mail and Electronic Mail)

Faye A. Flowers, Esquire
Parker, Poe, Adams & Bernstein LLP
1201 Main Street, Suite 1450
Columbia, South Carolina 29201
(ITC^DeltaCom)
(U. S. Mail and Electronic Mail)

Nyla M. Laney

PC Docs # 534731